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APRIL 22, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Filing
RM-11663
WT Docket No. 11-69
ET Docket No. 09-234

Dear Ms. Dortch:

This is to advise that on April 18, 2013, Jose Martin, Chief Executive Officer of PowerTrunk, Inc., Ken Keane and Patrick McPherson, counsel for PowerTrunk, met with Michael Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, and Roberto Mussenden, Brian Marenco and John Evanoff of PSHSB; Scot Stone, Deputy Chief, Mobility Division, and Tim Maguire, Mobility Division; and Ira Keltz, Deputy Chief, Office of Engineering and Technology, regarding issues presented by the Petition for Clarification and/or Reconsideration filed by Motorola Solutions, Inc. ("MSI")[1] in the instant proceeding, the subsequent opposition filed by the TCCA[2], the comments by APCO[3] and the reply by MSI.[4]

[1] Petition for Clarification and/or Reconsideration filed by MSI, WT Docket No. 11-69, submitted Nov. 9, 2012 ("Petition").

[2] Opposition to Petition For Reconsideration of Motorola Solutions, Inc. filed by TETRA + Critical Communications Assoc., WT Docket 11-69, submitted Jan. 2, 2013.

[3] Comments of APCO in Response to Petition For Clarification And/Or Reconsideration of MSI, WT Docket No. 11-69, submitted January 2, 2013.

[4] Reply of MSI WT Docket No. 11-69, submitted Jan. 14, 2013 ("Reply").

The PowerTrunk representatives addressed the following two issues raised by MSI in the Petition regarding the *Order*[5]:

1. Seeking clarification whether the Commission intended "to include the 800 MHz non-NPSPAC public safety pool channels under the scope of the new rules."

2. Seeking clarification whether the amended rules "would permit any equipment designed to operate in the relevant frequency bands to show compliance with the adjacent power limits of Section 90.221 instead of the emission masks contained in Section 90.210."

PowerTrunk noted that with respect to the first issue, MSI states that clarification is necessary because the first paragraph of the *Order* is ambiguous regarding its reference to the "Business/Industrial Land Transportation" channels and that "there is no discussion or analysis in the *Order* to indicate that the Commission distinguished between the NPSPAC and non-NPSPAC 800 MHz public safety channels in making its decision in this proceeding."[6] However, as the *Order* makes clear, it is 800 MHz channels not in the National Public Safety Planning Advisory Committee (NPSPAC) portion of the band, i.e., 809-824/854-869 MHz, that are subject to the *Order*. Specifically, the *Order* explains that the NPSPAC channels are not available to TETRA technology because they have a channel spacing of only 12.5 KHz as compared to Business/Industrial Land Transportation channels.[7] PowerTrunk noted that the Order specifically differentiates between NPSPAC and non-NPSPAC 800 MHz public safety channels (emphasis added):

> The record is clear that TETRA is a valuable option for licensees requiring a spectrally efficient wireless solution and we conclude that it imparts minimal interference potential to the RF spectrum considered herein, i.e., the UHF band and the non-NPSPAC portion of the 800 MHz band.[8]

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[5] Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked radio (TETRA) Technology and Request by the TETRA Association for Waiver of Section 90.209, 90.210, and 2.1043 of the Commission's Rules, *Report and Order*, WT Docket No. 11-69, ET Docket No. 09-234, 27 FCC Rcd 11569 ("*Order*").

[6] Petition at p. 2.

[7] *Order* at ¶9.

[8] *Id.* at ¶5.

> [W]e do not believe the record supports allowing TETRA on the 800 MHz public safety NPSPAC channels. The NPSPAC 25 kHz channels are spaced only 12.5 kilohertz apart and are therefore more susceptible to adjacent channel interference than the channels in the rest of the 800 MHz band, which are spaced 25 KHz apart.[9]

PowerTrunk further explained that the Business/Industrial Land Transportation channels are in "the rest of the 800 MHz band", and thus, contrary to MSI's statements, the *Order* distinguished between the NPSPAC and non-NPSPAC 800 MHz public safety channels in making its decision to amend the rules to allow TETRA to be used on the non-NPSPAC 800 MHz public safety channels. It is further noted that amended Rules 90.209 and 90.210, and new Rule 90.221 all specifically identify the 800 MHz band which are spaced 25 KHz apart and include public safety channels, i.e., 809-824/854-869 KHz. These rules have been applied by Commission-approved labs to issue equipment authorizations, including for PowerTrunk's equipment. PowerTrunk also referenced the license issued to New Jersey Transit on February 14, 2013 for TETRA technology (Call sign: WQQR235 File No. 0005593334) which includes three, non-NPSPAC, public safety channels in the 800 MHz band. Based on the above, PowerTrunk does not believe that further clarification of the *Order* is necessary.

PowerTrunk explained that with respect to the second issue raised by MSI, PowerTrunk agrees that the Commission rules should be interpreted to be technologically neutral where there are no explicit restrictions, but PowerTrunk is also cognizant that the *Order* addressed issues that are specific to TETRA technology.

PowerTrunk also discussed MSI's Reply which raised the issue of interoperability with regard to 800 MHz non-NPSPAC channels.[10] Specifically, MSI raised as justification for its position:

> Currently, all other non-P25 digital technologies operating on the 800 MHz public safety interleaved channels maintain an analog mode. Allowing TETRA devices that lack the ability to operate in the analog mode on the 800 MHz non-NPSPAC

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[9] *Id.* at ¶9.

[10] In its Reply, MSI raises an additional issue that in the 700 MHz spectrum "the Commission prohibited the use of TETRA due to interoperability concerns". Reply at 3. In fact, the *Order* states that "TETRA technology is not suitable for use in the 700 MHz public safety broadband spectrum because both the Commission and recent legislation passed by Congress have specified Long Term Evolution (LTE) as the required broadband technology for the segment." *Order* at ¶10. Although the *Order* states further that "the Commission's rules require that 700 MHz narrowband radios use Project 25 Phase I technology on the 700 MHz narrowband interoperability channels, and there is no indication in the record that TETRA equipment would conform to this record" (*id.*), in fact, PowerTrunk previously stated its intention to provide its TETRA equipment with multimode capability in 700 MHz so as to comply with the interoperability requirement. PowerTrunk *Ex Parte*, WT Docket 11-69, submitted 2/28/12.

public safety channels would encourage manufacturers of other non-P25 digital designs to similarly drop analog capabilities in order to remain cost competitive.[11]

PowerTrunk explained that because this issue was not first raised in its Petition, it was untimely for MSI to seek to raise it in a Reply. Rule 1.106. Substantively, PowerTrunk explained that the premise for MSI's argument is faulty as there is no rule that equipment operating on 800 MHz non-NPSPAC channels be required to maintain an analog mode. Rule 90.203(i) only requires that equipment marketed for public safety operation on the NPSPAC channels, 851-854 MHz, must have the capability to be programmed to operate on the mutual aid channels. PowerTrunk further stated that, if the baselessness of MSI's argument shows anything, it is revealing of MSI's anti-competitive intent to artificially inflate the cost of competing equipment to the detriment of public safety agencies by asserting non-existing rules. The TETRA technology is considerably more economical and capable than other previously available technologies in the United States. PowerTrunk's view is that budgetary considerations are a driving factor affecting the equipment selection decisions of the public safety organizations. MSI is in the incongruous position of seeking to deprive U.S. first responders of the very same TETRA technology which it itself has supplied to the British Police for a nationwide network.

PowerTrunk also discussed MSI's recent petition for reconsideration of PowerTrunk's equipment authorization[12], and subsequent withdrawal.[13] In its Withdrawal, MSI incorrectly refers to PowerTrunk's D-LMR technology as a "non-compliant" digital technology if operated on the NPSPAC channels. MSI's assertion is belied by PowerTrunk's equipment authorizations. It is further belied by the fact that Harris Corporation, on whose *ex partes* it relies for this assertion, found it necessary to file a Petition for Rulemaking last year seeking changes to rules which it had previously claimed already prohibited PowerTrunk's equipment![14] That Petition, and certain of the issues it raised, will be the subject of the further proceeding referenced in para. 13 of the *Order*.[15] PowerTrunk explained that it considered MSI's disparagement of its equipment as purposeful, and that MSI has long been aware that PowerTrunk's D-LMR equipment is fully compliant with Part 90. PowerTrunk considers MSI's unsupported statements as another example of MSI attempting to utilize the Commission's docket for commercial

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[11] Reply at p. 3.

[12] Petition for Reconsideration FCC ID WT7PTRNKTBSR75800 filed by MSI, submitted February 25, 2013.

[13] Withdrawal of Petition for Reconsideration FCC ID WT7PTRNKTBSR75800 filed by MSI, submitted April 8, 2013 ("Withdrawal").

[14] Petition for Rulemaking filed by Harris Corporation, WT Docket 11-69, submitted April 30, 2012.

[15] Given the *Order's* revisions to the emission mask Rule to accommodate TETRA's adjacent channel power ratio protection (new Rule 90.210 note 5("Equipment may alternatively meet the Adjacent Channel Power limits of § 90.221."), the arguments regarding the Mask B/Mask H issue are now moot.

purposes. To the extent that MSI's petition for reconsideration of PowerTrunk's equipment authorization was premised on the same argument underlying the Petition in the instant proceeding, MSI should withdraw the Petition in the instant proceeding as well.

A copy of this letter is being filed in the Docket of the above-referenced proceedings.

Very truly yours,

Patrick D. McPherson

PDM/sd

cc: Michael Wilhelm
Brian Marenco
Roberto Musseden
John Evanoff
Scot Stone
Tim Maguire
Ira Keltz

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 22, 2013 a true and correct copy of the attached Ex Parte Filing dated April 22, 2013, was sent by First Class Mail to the following person:

Mr. Chuck Powers
Director, Engineering and Technology Policy
Motorola Solutions, Inc.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004